

**DECISION TREE AGENDA**  
**(CORRESPONDS WITH DECISION TREE DIAGRAM)**

**Question #1** (Ban on New SFVRs)

1.1 Should all **new** SFVRs be banned outside VDAs?

- Straw vote [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5]

If “**Yes**” go to G-1 (Grandfathering). If “**No**” continue below.

<b>Question 1.1: Should all new SFVRs be banned outside of VDAs?</b>	
<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<p>A ban will:</p> <ul style="list-style-type: none"> <li>• Uphold the intent of the zoning districts.</li> <li>• Preserve and sustains the character and integrity of single-family residential neighborhoods.</li> <li>• Promote stability, protects the interests of residents living in the neighborhoods, and ensures lifestyles of permanent residents will not be unreasonably disrupted.</li> <li>• Halt the continued commercialization of residential neighborhoods.</li> <li>• Preserve the intent of establishing VDAs (e.g., availability of public services and facilities, suitability for visitor-related uses, etc.).</li> <li>• Perpetuate and enhances the community value of protecting the culture and rural island lifestyle (General Plan 2000).</li> <li>• Direct visitor uses and activities where services and infrastructure are available (i.e., fire, police, ambulance, lifeguards, roads, sewer and rubbish disposal, etc.).</li> <li>• Protect coastal resources by reducing occupancy numbers in houses that exceed cesspool/sewage capacity for their designed/approved use, and by removing a major incentive for building “closer-to-the-water” structures.</li> <li>• Facilitate residents’ ability to compete with tourist market for needed housing.</li> <li>• Help the hotel industry maintain higher occupancy numbers.</li> </ul>	<ul style="list-style-type: none"> <li>• Data does not support ALL AREAS being of critical concern</li> <li>• Better to consider % CAP per community</li> <li>• General Plan (sec 4.2.6.1) encourages alternative lodging and this alternative is not part of the General Plan recommendation.</li> <li>• Limiting new SFVRs outside VDA is not going to solve an affordable housing problem, will not keep rentals and housing prices down.</li> <li>• Discriminates against long time owners who are not currently vacation renting and may choose to at a later time.</li> <li>• They contribute significantly to our economy at all levels.</li> <li>• They provide alternative, desirable accommodations for our visitors.</li> <li>• They often produce an opportunity for visitors to experience the culture and island lifestyle.</li> <li>• May result in “underground” rental activities that are not professionally managed and no tax revenue will be received.</li> <li>• Encourages fractional ownership which would produce no tax revenue.</li> <li>• As grandfathered homes are reduced by attrition there will be a significant reduction in current jobs for residents (Housekeepers, window washers, maintenance, etc.) that support local families.</li> </ul>

**Question #2 (Cap on SFVRs Outside VDAs/Grandfather Existing Units)**

2.1 Should there be a percentage **cap** on SFVRs outside VDAs?

- Straw vote [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5]

If “**Yes**” go to Question 3. In “**No**” continue to G-1.

<b>Question 2.1:</b> Should there be a percentage cap on SFVRs outside VDAs?	
<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<ul style="list-style-type: none"> <li>• A cap on SFVRs in neighborhoods is the only effective way to maintain a “balance.” Many have said that “maintaining a balance” is important.</li> <li>• Allows families who want to operate a vacation rental to do it sometime in the future.</li> <li>• Establishes a sense of control for more SFVRs; vacation rentals in too high numbers will overwhelm and ultimately cause a neighborhood to deteriorate.</li> <li>• Vacation rentals as a small percentage of a neighborhood can be a positive thing.</li> <li>• Police tell us that one of the key protections against crime is a strong neighborhood—i.e., one where people look out for each other. When most of the “residents” are strangers to each other, the neighborhood becomes more vulnerable to crime and other breakdowns.</li> <li>• A cap is the best way for vacation rentals to exist successfully on Kaua’i. Otherwise, they will become disliked and resented—which will not be good for the vacation rental industry, for the visitor industry or the community.</li> </ul>	<ul style="list-style-type: none"> <li>• We do not have enough information to accurately establish caps by areas and an island-wide cap would not affect the numbers significantly in the areas with high numbers.</li> <li>• We need to begin with a regulation process that is inclusive, collect a data base and then look at real numbers to determine if caps are required. We can then implement them, if desired as a part of the renewal process.</li> <li>• If you permit an entitlement, it is harder to withdraw such entitlements later should you find that you allowed too many. The better way is to ban new SFVRs outside of VDAs, study the impacts and then allow more, if the study shows that it is merited.</li> </ul>

**Question #3 (Percentage Cap, If Any)**

3.1 Assuming that SFVRs are allowed by permit, do you agree that SFVRs should be limited to a certain percentage in a given neighborhood?

- Straw vote [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5]

**Question 3.1-** Assuming that SFVRs are allowed by permit, do you agree that new SFVRs should be limited to a certain percentage in a given neighborhood?

<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<ul style="list-style-type: none"> <li>• Consistent with General Plan Goals to allow Alternative Vacation Accommodations.</li> <li>• Preserves and sustains the character and integrity of single-family residential neighborhoods.</li> <li>• Promotes stability, protects the interests of residents living in the neighborhoods, and ensures lifestyles of permanent residents will not be unreasonable disrupted.</li> <li>• Can set the maximum % allowed depending on current data and area.</li> <li>• Evaluate cumulative impacts on neighborhoods.</li> <li>• Provides a stable solid base for visitors at alternate locations on Kauai to support the economy.</li> <li>• Can be easily monitored and managed.</li> <li>• Better than outright ban or prohibition.</li> <li>• Best way to define “balance” for community.</li> </ul>	<ul style="list-style-type: none"> <li>• Difficult for community to tell what is legal and what is not.</li> <li>• County will not manage the program properly and lead to widespread abuse.</li> <li>• Discriminatory restraint of trade without solid data supporting reason.</li> <li>• Allows SFVRs to exist forever in all areas of Kauai that are zoned non-VDA.</li> <li>• The cap could be increased in the future, further reducing the amount of "residents" in residential areas.</li> <li>• Sets the legal precedent that SFVRs are legal in non-VDAs.</li> <li>• May have legal issues as to who gets to continue SFVRs if the neighborhood % of SFVRs is above the cap.</li> <li>• Will increase the amount of SFVRs in areas that presently have a lower % than the cap that is set.</li> </ul>

3.2 Assuming that SFVRs are allowed, and that there is consensus that new SFVRs should be limited to a certain percentage in a given neighborhood, what percentage should be allowed?

- Quick thoughts/one-liner with percentage [all stakeholders, table go-around on their thinking]
- Average of the quick thoughts
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5] on various proposals

## **Question #4 (Cap by Lottery? Or Cap By Use Permit?)**

**[Instructions: Facilitator: first describe the Lottery, then the Use Permit, Pro/Con]**

4.1 Assuming there is a cap on SFVRs outside VDAs, should new SFVRs be allowed by Lottery<sup>1</sup> or Use Permit<sup>2</sup>? (Both will be addressed)

- Straw vote **Lottery** [Yes/No]
- Straw vote **Use Permit** [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support for each option [1-5]

Go to **G-1** (Grandfathering) for either Lottery or Use Permit

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<sup>1</sup> A lottery might work as follows: persons with single family dwelling units outside VDAs with no outstanding zoning or building code violations may apply to have their names drawn from a pool of qualified applicants up to the percentage cap allowed. The Planning Commission and/or the County Council would develop the specific details.

<sup>2</sup> A Use Permit system might work as follows: persons with single family dwelling units outside VDAs with no outstanding zoning or building code violations may apply to the Planning Commission, which will consider standards and criteria, such as the number of people occupying a unit, providing for on-site parking, compatibility with the neighborhood and zoning laws, adequacy of neighborhood infrastructure, and the percentage cap (if any). The specific details would be developed by the Planning Commission and/or the County Council.



<b>Question 4.1:</b> Assuming there is a cap on SFVRs in non-VDA neighborhoods, should new SFVRs be allowed by Lottery <u>or</u> Use Permit? (Both will be addressed)	
<b>LOTTERY</b>	
<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<ul style="list-style-type: none"> <li>• Some perceive a lottery as a fairer process than a permit system because the lottery system does not allow for discretion and possible discrimination by the decision-makers.</li> <li>• A lottery system may have less “bureaucracy”</li> <li>• A permit process could be rigged.</li> </ul>	<ul style="list-style-type: none"> <li>• A lottery system does not allow for case-by-case evaluation of the suitability of a site for a vacation rental (including looking at neighborhood compatibility or cumulative impact)</li> <li>• A lottery could be rigged</li> <li>• No public hearing to allow citizen input</li> </ul>

<b>Question 4.1:</b> Assuming there is a cap on SFVRs in non-VDA neighborhoods, should new SFVRs be allowed by Lottery <u>or</u> Use Permit? (Both will be addressed)	
<b>USE PERMIT</b>	
<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<ul style="list-style-type: none"> <li>• It is important to do a case-by-case evaluation of the suitability of a site for a vacation rental, and you can only do that by a permit process.</li> <li>• A lottery could be rigged.</li> <li>• Allows for citizen input via a public hearing</li> </ul>	<ul style="list-style-type: none"> <li>• The Public Hearing process for each permit application would be overly burdensome on the Planning Dept.</li> <li>• A permit system allows for discretion and possible discrimination by decision-makers</li> <li>• A permit process could be rigged (see above)</li> </ul>

## **Grandfathering Questions**

G-1 Assuming that grandfathering<sup>3</sup> is established to address existing units, should it define “legal pre-existing use” to include timely payment (paid when due) of GET and TAT and compliance with all federal, state, and county laws?

- Straw vote [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5]

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<sup>3</sup> For the purpose of this Decision Tree, the term “grandfathering” will be used because it is the term that is in common usage. The “official” term per the Comprehensive Zoning Ordinance is “non-conforming use.”

<b>Question G-1:</b> Assuming that grandfathering is established to address existing units, should it define “legal pre-existing use” to include timely payment (paid when due) of GET and TAT and compliance with all federal, state, and county laws?	
<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<ul style="list-style-type: none"> <li>Existing rules do not currently address Legal pre-existing use and should do so for clarity.</li> <li>Eliminates illegal existing uses and structures</li> <li>Ensures that property owner has been paying taxes in the past in order to grandfather.</li> <li>Ensures that property owner in compliance with all federal state and county laws.</li> </ul>	<ul style="list-style-type: none"> <li>Planning should be only concerned with use, taxes are state’s job, other agencies their job</li> <li>If TVRs have to be in compliance, then you must include all long term rentals to be in compliance to avoid an arbitrary and unreasonable legal claim</li> <li>Huge job for county to enforce state and federal laws</li> <li>Compliance needs to be confined to County laws</li> <li>May be enough to have paid GET and TAT sounds like a huge job to enforce State and Federal laws</li> </ul>

G-2 Assuming that grandfathering is established, what should be the time requirement for legal operation prior to passage of law in order to claim non-conforming status? (note: this refers to usage prior to passage of a law)

- Quick thoughts/one-liner with time requirement [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]  
(Information gathering only; refer information to decision-makers)

G-3 Under the current CZO, a “non-conforming use<sup>4</sup>” will cease if not used at least one day in one year. Assuming that grandfathering is established, do you agree that there is a public policy interest in requiring active use for at least ½ year (180 days?) in a year? (note: this refers to usage after passage of a law)

- Straw vote [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5]

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<sup>4</sup>One definition of “non-conforming use” states: “In order to qualify as pre-existing nonconforming use, a particular use must satisfy two threshold requirements. First, the landowner must show that the property was devoted to such use prior to the enactment of the prohibitory zoning regulation. Second, the landowner must prove that the use in question was “lawful” when commenced; it must have been in full conformance with all applicable zoning regulations in effect when the activity began.

A pre-existing use (the first element) is one that involves a utilization of the premises in a manner that it is known in the neighborhood as being used for a given purpose, is designed or arranged to carry out that purpose and is put to that purpose, prior to the effective date of the ordinance.” 44 AM JUR POF 3d 531.

G-4 Assuming that grandfathering is established, do you agree that re-sale will cause loss of non-conforming status?

- Straw vote [Yes/No]
- Quick thoughts/one-liner [all stakeholders, table go-around on their thinking]
- Discussion [individual stakeholder comments]
- Indicate level of support [1-5]

<b>Question G-4:</b> Assuming that grandfathering is established, do you agree that re-sale will cause loss of non-conforming status?	
<b><u>Pro/Favor</u></b>	<b><u>Con/Not in Favor</u></b>
<ul style="list-style-type: none"> <li>• Would return residential areas back to the non-commercial use.</li> <li>• Will allow attrition that will reduce the high concentration of visitor units outside VDA.</li> <li>• May tend to keep properties in the "family" that wants to continue to VR the property, instead of selling to a new owner.</li> <li>• With the re-sale resulting in the "loss of non-conforming status" in areas outside of VDAs it will make the VDAs the only areas that new VRs will be allowed and will make the VDAs a more viable area for VRs to operate.</li> </ul>	<ul style="list-style-type: none"> <li>• Government has the right only to regulate density and use, not ownership. Would cause legal problems for County.</li> <li>• Could be argued that since an existing VR has occupied the property that the same operation has the right to continue with a new owner.</li> <li>• May present legal issues, as it will restrict the freedom of the owners to sell their properties to whom they wish.</li> </ul>